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Via ECFS

EX PARTE

September 16, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Connect America Fund*, WC Docket No. 10-90; *High-Cost Universal Service Support*,
WC Docket No. 05-337

Dear Ms. Dortch:

CenturyLink is filing this letter to urge the Commission to address two similar issues that have been previously raised, namely, the manner in which price cap carriers must certify to use of CAF frozen support and CAF ICC support. As has been previously advocated, CenturyLink urges the Commission to permit price cap carriers to certify use of both types of support at the holding company level.¹ By clarifying that price cap carriers have the flexibility to certify use of this support at the holding company level, the Commission will best enable use of that support to accomplish the Commission's goal of making broadband Internet access service available to consumers in areas not served by an unsubsidized competitor as quickly as possible.

In 2014, pursuant to 47 C.F.R. § 54.313(c)(2), CenturyLink and other price cap carriers will be required to certify that "at least one-third of the frozen-high-cost support the company received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor."²

¹ See Letter from David Cohen, USTelecom, to Marlene Dortch, FCC, in WC Docket No. 10-90, filed January 31, 2013 at 2-3; Letter from Malena F. Barzilai, Windstream, to Marlene H. Dortch, FCC, in WC Docket Nos. 10-90 and 05-337, filed September 9, 2013 (Windstream Letter).

² In subsequent years price cap carriers will need to certify that at least two-thirds of their frozen support in 2014 was used to deploy and maintain broadband capable networks and in 2015 that all frozen support received was used to deploy and maintain broadband capable networks in areas served by an unsubsidized competitor.

Similarly, by October 15 of this year, pursuant to 47 C.F.R. § 54.313(d), price cap carriers receiving CAF ICC support must certify that support received in 2012 “was used to build and operate broadband-capable networks used to offer provider’s own retail service in areas substantially unserved by an unsubsidized competitor.”³ In both instances, this language does not limit use of the support to the specific study area for which a particular amount of the support was received. It only limits its use to areas “substantially unserved by an unsubsidized competitor.” As such the requirement is consistent with a holding company certification as to the use of the support received.

CenturyLink recognizes that as the FCC Form 481 has been developed and is being implemented that there is a presumption that these certifications will be made at a study area level. Given the language of the Commission’s rules regarding the certifications, however, there is no explicit requirement to limit the certification in this manner.⁴ And, in fact, limiting the certification to the study-area level will only inhibit effective use of the support. Fundamentally, it will unnecessarily retard the Commission’s goal of getting broadband services to areas without an unsubsidized competitor as quickly as possible.

One reason for this is that if price cap carriers are required to provide this certification at a study-area level, the presence of unsubsidized carriers in certain study areas may preclude use of that support in those study areas. For instance, if CenturyLink is required to provide its certification for use of frozen support in 2013 at a study-area level, we currently anticipate that we will be unable to certify to use of approximately \$ 2.5 million of that support in 2013.⁵ And, the amount of frozen support that CenturyLink might need to return in 2014 would likely be even higher, although that amount may also be impacted by CAF Phase II support in ways that cannot be reasonably calculated at this time. If, however, CenturyLink can make the certification at the

³ 47 C.F.R. § 54.313(d) and *see* Windstream Letter at 1.

⁴ CenturyLink also recognizes that there is language in a footnote of the *Transformation Order* that addresses the *allocation* of CAF ICC support to study areas. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 17994-95 ¶ 918 & n. 1818 (2011) (subsequent history omitted). But this note does not address where CAF ICC support must be used. Nowhere, in fact, in the *Transformation Order* text or rules have we been able to locate language that requires that CAF frozen support and CAF ICC support be used only in the study area through which it was received.

⁵ CenturyLink currently estimates that if we were required to certify use of CAF ICC support and CAF frozen support in 2013 at a study-area level that the company would need to return approximately \$2.9 million of the combined support.

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holding company level, we anticipate that we could certify to using one-third of the company's total CAF frozen high-cost support in 2013 in accord with the certification requirements.

Similarly, if the Commission requires that the CAF ICC certification be made at the study-area level, CenturyLink will be unable to certify that we used all of the CAF ICC support the company received in 2012.⁶ If, however, CenturyLink is able to account for use of the support in other areas without an unsubsidized competitor at the holding company level, we have effectively used all of our 2012 CAF ICC support to meet the Commission's objectives for use of the support, and we can certify accordingly.

Given this, the Commission should not limit its interpretation to permit these certifications to be made only at the study area level. Instead, it should promptly clarify that these certifications may be made at the holding company level as well. Permitting these certifications at the holding company level accomplishes the Commission's stated objectives regarding the use of the support. It enables the support provided to be effectively used now to deploy and maintain broadband-capable networks in areas without an unsubsidized competitor, while the Commission transitions to a longer-term mechanism for distributing CAF support.

Consequently, the Commission should promptly clarify that the CAF frozen support certification and the CAF ICC support certifications may be made at the holding company level.

Alternatively, in the absence of any further clarification of these certification requirements, price cap carriers should be permitted to certify their use of CAF frozen support and CAF ICC support at the holding company level free from retroactive application of any alternative clarification.

Please contact me with any questions regarding this request.

Sincerely,

/s/ Jeffrey S. Lanning

Copy via email to:

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⁶ CenturyLink was not able to spend approximately \$5,000 in one study area because the presence of an unsubsidized competitor in that area precluded effective use of this support in that area.